

## **Chapter 15**

### **Alcoholic Product Liability Act**

#### **Part 1**

#### **General Provisions**

##### **32B-15-101 Title.**

This chapter is known as the "Alcoholic Product Liability Act."

Enacted by Chapter 276, 2010 General Session

##### **32B-15-102 Definitions.**

As used in this chapter:

- (1) "Death of a third person" includes recovery for all damages, special and general, resulting from the death, except punitive damages.
- (2)
  - (a) "Injury" includes injury in person, property, or means of support.
  - (b) "Injury" also includes recovery for intangibles such as:
    - (i) mental and emotional injuries;
    - (ii) loss of affection; and
    - (iii) loss of companionship.

Enacted by Chapter 276, 2010 General Session

#### **Part 2**

#### **Liability**

##### **32B-15-201 Liability for injuries and damage resulting from distribution of alcoholic products.**

- (1)
  - (a) Except as provided in Subsections 32B-15-202(2) and (3), a person described in Subsection (1)(b) is liable for:
    - (i) any and all injury and damage, except punitive damages to:
      - (A) a third person; or
      - (B) the heir, as defined in Section 78B-3-105, of that third person; or
    - (ii) the death of a third person.
  - (b) A person is liable under Subsection (1)(a) if:
    - (i) the person directly gives, sells, or otherwise provides an alcoholic product:
      - (A) to a person described in Subsection (1)(b)(ii); and
      - (B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product;
    - (ii) those actions cause the intoxication of:
      - (A) an individual under the age of 21 years;
      - (B) an individual who is apparently under the influence of intoxicating alcoholic products or drugs;

- (C) an individual whom the person furnishing the alcoholic product knew or should have known from the circumstances was under the influence of intoxicating alcoholic products or drugs; or
  - (D) an individual who is a known interdicted person; and
  - (iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic product.
- (2)
- (a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for:
    - (i) any and all injury and damage, except punitive damages to:
      - (A) a third person; or
      - (B) the heir, as defined in Section 78B-3-105, of that third person; or
    - (ii) the death of the third person.
  - (b) A person is liable under Subsection (2)(a) if:
    - (i) that person directly gives or otherwise provides an alcoholic product to an individual who the person knows or should have known is under the age of 21 years;
    - (ii) those actions caused the intoxication of the individual provided the alcoholic product;
    - (iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic product; and
    - (iv) the person is not liable under Subsection (1), because the person did not directly give or provide the alcoholic product as part of the commercial sale, storage, service, manufacture, distribution, or consumption of an alcoholic product.
- (3) This section does not apply to a business licensed in accordance with Chapter 7, Off-Premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

Enacted by Chapter 276, 2010 General Session

**32B-15-202 Liability for employees -- Employee protected in exercising judgment.**

- (1)
- (a) Except for a violation of Subsection 32B-15-201(2), an employer is liable for the actions of its staff in violation of this chapter.
  - (b) This Subsection (1) does not apply to a business licensed in accordance with Chapter 7, Off-Premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.
- (2) An employer may not sanction or terminate the employment of individual staff of a retail licensee or other establishment serving an alcoholic product as a result of the staff having exercised the staff's independent judgment to refuse to sell an alcoholic product to a person the staff considers to meet one or more of the conditions described in Subsection 32B-15-201(1)(b).
- (3) An employer who terminates an employee or imposes sanctions on the employee contrary to this section is considered to have discriminated against that employee and is subject to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.

Enacted by Chapter 276, 2010 General Session

**32B-15-203 Governmental immunity.**

This title does not create civil liability on the part of the following arising out of one of the following's actions in regulating, controlling, authorizing, or otherwise being involved in the sale or other distribution of an alcoholic product:

- (1) the state;

- (2) a state agency;
- (3) a state employee;
- (4) the commission;
- (5) the department; or
- (6) a political subdivision.

Enacted by Chapter 276, 2010 General Session

### **Part 3**

### **Civil Action**

#### **32B-15-301 Cause of action -- Statute of limitations.**

- (1)
  - (a) A person who suffers an injury under Section 32B-15-201 has a cause of action against the person who provided the alcoholic product in violation of Section 32B-15-201.
  - (b) If a person having rights or liabilities under this chapter dies, the rights or liabilities provided by this chapter survive to or against that person's estate.
- (2) The total amount that may be awarded to any person pursuant to a cause of action for injury and damage under this chapter that arises after January 1, 2010, is limited to \$1,000,000 and the aggregate amount which may be awarded to all persons injured as a result of one occurrence is limited to \$2,000,000.
- (3) An action based upon a cause of action under this chapter shall be commenced within two years after the date of the injury and damage.
- (4)
  - (a) Nothing in this chapter precludes any cause of action or additional recovery against the person causing the injury.
  - (b) A cause of action or additional recovery against the person causing the injury and damage, which action is not brought under this chapter, is exempt from the damage cap in Subsection (2).
  - (c) A cause of action brought under this chapter is exempt from Sections 78B-5-817 through 78B-5-823.
- (5) This section does not apply to a business licensed in accordance with Chapter 7, Off-Premise Beer Retailer Act, to sell beer at retail only for off-premise consumption.

Enacted by Chapter 276, 2010 General Session

#### **32B-15-302 Action for contribution by provider of an alcoholic product.**

- (1)
  - (a) Except as provided in Subsections (2) and (3), a person, as defined under Section 32B-15-201 or Subsection 32B-15-202(1), against whom an award is made under this chapter, may bring a separate cause of action for contribution against any person causing the injury and damage.
  - (b) The maximum amount for which a person causing the injury and damage may be liable to a person seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage.
- (2) This action for contribution under this section may not be brought against:

- (a) a person entitled to recovery as described in Subsection 32B-15-201(1)(a)(i) or (ii); or
  - (b) a person entitled to recover as described in Subsection 32B-15-201(2)(a)(i) or (ii).
- (3) An action for contribution under this section may not diminish the amount of recovery for injury or damages awarded and received to a person entitled to recover as described in Subsection 32B-15-201(1)(a)(i) or (ii) or 32B-15-201(2)(a)(i) or (ii):
- (a) in a cause of action brought under this chapter; or
  - (b) in a separate cause of action for injury and damage that is not brought under this chapter.

Enacted by Chapter 276, 2010 General Session